



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Netu James, Fire  
Fighter (M1566T), Plainfield

List Removal Appeal

CSC Docket No. 2021-1112

**ISSUED: JULY 26, 2021 (HS)**

Netu James appeals the removal of his name from the eligible list for Fire Fighter (M1566T), Plainfield on the basis of his age.

As background, the appellant, a non-veteran, took and passed the open competitive examination for Fire Fighter (M1566T), which had a closing date of August 31, 2015. The resulting eligible list promulgated on March 11, 2016 and expired on March 28, 2019. The appellant's name was certified to Plainfield on January 30, 2018 (OL180111). In disposing of the certification, Plainfield requested the removal of the appellant's name on the basis that he did not appear for preemployment processing. The appellant successfully appealed the removal before the Civil Service Commission (Commission),<sup>1</sup> which restored the appellant's name to the M1566T eligible list. Since the M1566T list had expired, the Commission ordered that the list be revived in order for the appellant to be considered for appointment at the time of the next certification. *See In the Matter of Netu James, Fire Fighter (M1566T), Plainfield* (CSC, decided June 12, 2019). In accordance with that decision, the appellant's name was again certified to Plainfield on February 25, 2020 (OL200222). Upon disposition of the certification, the appellant's name was again removed, this time on the basis of his age. Specifically, a determination was made that since the appellant was over the age of 40, he did not meet the maximum hiring age requirement and so could not be appointed.<sup>2</sup>

<sup>1</sup> The appellant's appeal was received by the Commission in September 2018.

<sup>2</sup> This determination was apparently based on *N.J.S.A. 40A:14-45*, which concerns volunteer Fire Fighters and is discussed in further detail below. The record reflects that Plainfield does not have a volunteer fire force and that the appellant served as a volunteer Fire Fighter with Summit from

On appeal to the Civil Service Commission (Commission), the appellant acknowledges that candidates over the age of 35 as of an examination closing date are, with certain exceptions, not eligible for appointment to a Fire Fighter position. The appellant nevertheless maintains that his name was incorrectly removed in this case. While the appellant does not dispute his *current* age, he points out that he was 34 years old as of the closing date for the M1566T Fire Fighter open competitive examination<sup>3</sup> and that it was the M1566T eligible list that the Commission ordered revived in its June 12, 2019 decision. Thus, according to the appellant, the M1566T list was still active when he was certified to Plainfield on February 25, 2020 and there was no basis to remove his name based on his age. He maintains that he did not need to establish any volunteer service or other exception to allow him to be appointed. The appellant requests reinstatement to the eligible list and “immediate action” on his application by Plainfield and “reserve[s]” his right to pursue other remedies such as seniority, back pay, and pension benefits.

In response, Plainfield relies upon previously submitted documentation.

### CONCLUSION

*N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)2, allows for the removal of an individual from an eligible list where the individual is ineligible by law for employment in the title. *N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority’s decision to remove his name from an eligible list was in error.

*N.J.S.A.* 40A:14-12, in relevant part, provides:

Except as otherwise herein provided, no person shall be appointed as a member or officer of the paid fire department or force or as a paid member or officer of a part-paid fire department or force in any municipality, who is under 21 or over 35 years of age.

In any municipality wherein [the Civil Service Act] is operative, any person who shall have met the age requirements herein, at the announced closing date of a civil service examination for the position, shall be considered within the age requirements while the civil service list promulgated as a result of that examination is in effect.

*N.J.S.A.* 11A:4-6, in relevant part, provides:

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November 2004 to May 2015. It also appears that Plainfield had concerns over the appellant’s eligibility for pension purposes.

<sup>3</sup> This is undisputed in the record.

Notwithstanding the duration of a list, the [C]ommission may revive a list to implement a . . . decision of the [C]ommission in the event of a successful appeal instituted during the life of the list . . . .

*See also N.J.A.C. 4A:4-3.4(a)5* (Commission may revive an expired eligible list for other good cause).

*N.J.S.A. 40A:14-45*, in relevant part, provides:

In any municipality where an examination is scheduled to determine appointments to the paid or part-paid fire department and force, any qualified fireman having served in the volunteer fire company or force of the municipality for at least 2 years next preceding such appointment shall be entitled, in addition to his earned rating, to service credits of not less than 3 nor more than 10 points as may be determined by the governing body of the municipality or the authority in charge. Said appointee shall be over 21 but not more than 40 years of age at the time of the appointment.

Upon review, the Commission finds that the appellant should not have been removed from the February 25, 2020 certification on the basis of his age. There is no dispute in this matter that the appellant was 34 years old as of the closing date for the open competitive examination for Fire Fighter (M1566T) and was placed on the resulting eligible list. The appellant's name was certified to Plainfield on January 30, 2018 but was removed. The appellant successfully appealed that removal before the Commission, which restored the appellant's name to the M1566T eligible list. Since the M1566T list had by then expired, the Commission exercised its statutory authority to revive that list so that the appellant could be considered for appointment at the time of the next certification. Thus, the M1566T list was still "in effect" within the meaning of *N.J.S.A. 40A:14-12* when the appellant's name was again certified to Plainfield on February 25, 2020, and whether the appellant met the age requirement had to be judged using the closing date for the *M1566T* examination as the point of reference. Since the appellant was not over 35 years of age at that time, he met the age requirement.<sup>4</sup>

The Commission does not find that *N.J.S.A. 40A:14-45* required the removal of the appellant's name from the certification. Under that provision, volunteer Fire Fighters are eligible for service credits and appointment to a paid municipal Fire Fighter position, in the fire force in which they serve, provided they have two years of continuous volunteer service and are not over the age of 40 as of the date of

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<sup>4</sup> The Commission does not administer the pension system. Should Plainfield have concerns over the appellant's eligibility for pension purposes, it may wish to consult the Department of the Treasury, Division of Pensions and Benefits.

appointment. The Commission does not find this 40-years-of-age cutoff applicable to the appellant's situation. The appellant met the standard age requirement specified in *N.J.S.A.* 40A:14-12 for the reasons already discussed above. This is *not* a case of an individual, who fails to meet that requirement, seeking to use service in a municipality's volunteer fire force to otherwise establish his eligibility to be appointed to the municipality's paid force.<sup>5</sup> Moreover, nothing in *N.J.S.A.* 40A:14-45 suggests any intent to apply its 40-years-of-age cutoff to situations like the appellant's in this case.

However, the appellant did not possess a vested property interest in the position. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. See *Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990). Therefore, the appellant is not entitled to a retroactive appointment date or, concomitantly, seniority credit. He is also not entitled to any back pay. In this regard, *N.J.A.C.* 4A:2-1.5(b) provides that, in all appeals other than disciplinary and good faith layoff appeals, back pay may be granted as a remedy where an appointing authority has unreasonably failed or delayed to carry out an order of the Commission or where the Commission finds sufficient cause based on the particular case. *N.J.A.C.* 4A:2-1.5(b) further provides that a finding of sufficient cause may be made based on an appointing authority's bad faith or invidious motivation. See also *In the Matter of Anthony Hearn*, 417 *N.J. Super.* 289 (App. Div. 2010) (In the absence of a rule to define "sufficient cause" for purposes of the application of *N.J.A.C.* 4A:2-1.5(b), the court evaluated the various merits of Hearn's case and concluded that sufficient cause had been established). As there is no indication that Plainfield unreasonably failed or delayed in carrying out any Commission order or acted in bad faith or with invidious motivation, sufficient cause to award back pay is not present in this matter. The Commission has no jurisdiction over any contemplated request for pension benefits. See *supra* note 4.

Accordingly, it is appropriate that the appellant's name again be restored to the M1566T eligible list. Since the list has expired, good cause exists to again revive that list at the time of the next certification to allow the appellant to be considered for prospective appointment.

### ORDER

Therefore, it is ordered that the eligible list for Fire Fighter (M1566T), Plainfield be revived in order for Netu James to be considered for appointment at the time of the next certification for prospective employment opportunities only.

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<sup>5</sup> Nor is it clear how the appellant could have. The appellant's volunteer service was with Summit, not Plainfield (which does not even maintain a volunteer force), and his service ended a few months before the examination closing date.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 21<sup>ST</sup> DAY OF JULY, 2021

*Deirdre' L. Webster Cobb*

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Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Allison Chris Myers  
Director  
Division of Appeals and Regulatory Affairs  
Written Record Appeals Unit  
Civil Service Commission  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c. Netu James  
Abby Levenson  
Division of Agency Services